



U.S. Department of Justice

United States Attorney's Office

Southern District of New York

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New York, New York 10007

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CHAMBERS OF
P. KEVIN CASTEL
U.S.D.J.

MEMO ENDORSED**BY HAND DELIVERY**

The Honorable P. Kevin Castel
United States District Judge
United States Courthouse
500 Pearl St., Room 2260
New York, NY 10007

Re: Rathman v. Empire Health Choice Assurance, Inc. et al., 07 Civ. 11589(PKC)(DF)

Dear Judge Castel:

This Office represents one of the defendants in the above-referenced civil action – Empire Health Choice Assurance, Inc. (“Empire”), which acted as an agent of the Secretary of the U.S. Department of Health and Human Services (“HHS”) in connection with the events that are the subject of Plaintiff’s Verified Complaint. The Government removed this action to this Court from New York state court on December 27, 2007.

Under Rule 81(c)(2) of the Federal Rules of the Civil Procedure, the Government has until January 2, 2008 to respond to the Complaint. I respectfully request that the time for the Government to respond to the Complaint on behalf of Empire and, possibly, to move to substitute the Secretary of HHS as the real party in interest be extended by 60 days — from January 2, 2008 to March 3, 2008. Such an extension would provide the Government with an opportunity to investigate fully the circumstances relevant to this action and to explore the possibility of a consensual resolution. Counsel for plaintiff and I have been in contact seeking to resolve this matter without the Court’s intervention. He consents to this request for an extension.

This is the Government’s first request for an extension in this action. As no scheduling order has been entered, granting this request for an extension will not have an effect on any existing deadline in this action. I thank the Court for its consideration of this request.

Acknowledged
Granted
S.D.O.R.E.R.C.
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1/2/08

Respectfully,

MICHAEL J. GARCIA
United States Attorney

By: Li Yu

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